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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re ALEJANDRO H., a Person Coming Under
The Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEJANDRO H.,

Defendant and Appellant.

F048956

(Super. Ct. No. 05CEJ600689-1)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Timothy A. Kams, Judge.

Thea Greenhalgh, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, and Michael Dolida, Deputy Attorney General, for Plaintiff and Respondent.

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*Before Vartabedian, Acting P.J., Harris, J., and Cornell, J.

Former minor Alejandro H. contends the juvenile court abused its discretion by placing him at the California Youth Authority (CYA)¹ after he admitted carrying a loaded firearm and leaving the scene of an accident. (Pen. Code, § 12031, subd. (a)(1); Veh. Code, § 20001, subd. (a).) We will affirm the disposition.

FACTUAL AND PROCEDURAL BACKGROUND

According to a probation officer's report, a witness observed 17-year-old Alejandro on the afternoon of April 13, 2005, driving a Nissan Altima at speeds up to 90 miles per hour pursuing a blue Chevrolet Blazer. Alejandro ran a red light at an intersection and broadsided a pickup truck, causing the truck to roll over and injure its driver. Alejandro and his passengers ran from the Altima and were picked up by the driver of a white Blazer. Before leaving the scene, Alejandro exited the white Blazer and walked over to the Altima and retrieved a short-barreled shotgun and wrapped it in his jacket. He got back into the white Blazer and left the scene at a high rate of speed.

The driver of the white Blazer subsequently contacted the police and informed the investigating officer that Alejandro threw the shotgun onto a dirt field after the crash. The driver also said Alejandro kept a sawed-off shotgun behind the back seat of another car.

On May 2, 2005, police officers searched Alejandro's residence and found a sawed-off shotgun behind the seat of his Chrysler 300M. Alejandro admitted he was a member of a central valley street gang and he was chasing the blue Blazer because its occupants were members of a rival gang.

The Fresno County District Attorney filed an amended juvenile wardship petition alleging Alejandro carried a loaded firearm (count 1; Pen. Code. § 12031, subd. (a)(1)),

¹ The CYA was renamed the division of Juvenile Justice of the Department of Corrections and Rehabilitation effective July 1, 2005. (Gov. Code, §§ 12838, subd. (a), 12838.3.) We will retain the designation CYA as referenced by the trial court.

concealed a firearm in a vehicle (count 2; Pen. Code, § 12025, subd. (a)(1)), committed street terrorism (count 3; Pen. Code, § 186.22, subd. (a)), left the scene of an accident (count 4; Veh. Code, § 20001, subd. (a)), and engaged in hit and run driving (count 5; Veh. Code, § 20002, subd. (a)). The first two counts also included allegations the offenses were committed for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b)(1)).

Alejandro admitted carrying a loaded firearm and leaving the scene of an accident, and the juvenile court dismissed the remaining counts and street gang allegations with a right to comment and impose restitution. The juvenile court declared the admitted offenses felonies and committed Alejandro to the CYA for a maximum period of confinement of two years eight months based on the middle two-year term for carrying a loaded weapon plus an eight-month consecutive subordinate term for leaving the scene of an accident.

DISCUSSION

Alejandro contends the juvenile court abused its discretion in placing him at the CYA because the record lacked sufficient evidence to support the commitment. He believes alternative less restrictive local programs were available that would have provided a likely benefit and that the juvenile court improperly committed him to the CYA “solely for punishment, and because it believed [he] represented a danger to the community.”

A juvenile court’s commitment decision may be reversed on appeal only upon a showing the court abused its discretion. (*In re Todd W.* (1979) 96 Cal.App.3d 408, 416.) “ ‘We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them.’ ” (*In re Lorenza M.* (1989) 212 Cal.App.3d 49, 53.)

In determining whether the juvenile court abused its discretion, a commitment must conform to the general purpose of the juvenile court law. (Welf. & Inst. Code,

§ 202; *In re Todd W.*, *supra*, 96 Cal.App.3d at p. 417.) Legislation enacted in 1984 recognized punishment as a rehabilitation tool and shifted the “emphasis from a primarily less restrictive alternative approach oriented towards the benefit of the minor to the express ‘protection and safety of the public’ [citations] where care, treatment, and guidance shall conform to the interests of public safety and protection.” (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396.) The disposition must also evidence probable benefit to the minor and that less restrictive alternatives would be ineffective or inappropriate. (Welf. & Inst. Code, § 202, subd. (e); *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.)

While the juvenile court law contemplates a progressively restrictive and punitive series of dispositions, there is no absolute rule that the court may not impose a particular commitment until less restrictive placements have actually been attempted. (*In re Teofilio A.*, *supra*, 210 Cal.App.3d at p. 577.) “[I]f there is evidence in the record to show a consideration of less restrictive placements was before the court, the fact the judge does not state on the record his consideration of those alternatives and reasons for rejecting them will not result in a reversal.” (*Ibid.*)

Applying these principles, we conclude the juvenile court acted within its discretion by placing Alejandro at the CYA. At the dispositional hearing, the juvenile court referred to the arguments of counsel, the probation department’s report, and an alternative report prepared by Assessment, Training, & Research Associates. The probation report emphasized Alejandro’s “willful and wanton disregard for the safety of the public” by engaging in a high-speed chase, engaging a rival gang on the public roadways for the apparent purpose of shooting, and striking an unsuspecting victim’s vehicle without rendering aid. The evaluating probation officer detailed Alejandro’s “callous disregard for others when he returned to the scene to rescue his sawed off shotgun from his vehicle, again ignoring the victim.” The probation officer opined Alejandro’s insignificant delinquency record was “overshadowed by the circumstances of

the offense” and recommended a lengthier maximum period of confinement than actually imposed by the juvenile court. The probation officer also contacted the CYA before making the recommendation and discovered Alejandro would likely serve only one year at the CYA until being released on parole and that the CYA program required he attend high school classes, gang awareness counseling, substance abuse counseling, victim/crime impact classes, and anger management classes.

After reviewing the evidence in the record, the juvenile court stated it “considered all less restrictive programs and forms of custody and is fully satisfied they are inappropriate dispositions at this time.” The juvenile court also found Alejandro would benefit from the CYA’s reformatory, educational, and disciplinary treatment while at the same time protecting the community. The juvenile court explained:

“I will make a couple of comments. First of all with recent changes in the code, the Court is under an obligation to make a discretionary finding in this case. I do find that the discretionary findings as to Count One, which would be [the] principal term, the allegation -- or the factors in aggravation in mitigation offset specifically mitigation, the Minor’s lack of prior history, [and] his stated remorse. However, the Minor does present a significant danger to the community. He is in significant need of services such as gang intervention, substance abuse treatment, educational and/or vocational training so he can provide for himself and or his family upon his release. The Court has considered the alternative recommendation, however, it is not in a setting that affords any protection to the community. And in light of the facts of this case, that protection is certainly warranted. [¶] It’s the Court’s view that the Minor can receive effective services while at the same time there will be a protection to the community by the Court’s order that the Minor serve custodial commitment at the California Youth Authority.”

Despite Alejandro’s contention to the contrary, the record indicates the juvenile court committed him to the CYA after expressly considering the relevant factors required under the juvenile court law and that sufficient evidence supports the placement decision. Although Alejandro also asserts the juvenile court abused its discretion because it failed to consider numerous inadequacies of the CYA as evidenced by various academic

studies, he admits “these reports and findings were not presented as evidence to the juvenile court,” but the “publicity about them has been pervasive, and indicative of major problems.” While such negative reports may exist, they may not be considered for the first time on appeal. (*People v. Scott* (1994) 9 Cal.4th 331, 356.) In any event, there is no showing the trial court was not aware of this information and we cannot speculate as to what the juvenile court knew or did not know.

DISPOSITION

The judgment is affirmed.